3. Fraud (§ 20*)—Deceit—Reliance—Remedy.—Where a party represents as true what he knows to be false in such a way as to induce a reasonable man to believe it, and the representation is meant to be acted on, and he to whom the representation is made believes and acts on it and in consequence sustains damage, there is such a fraud as will support an action for deceit at law or a bill for rescission of the transaction in equity, whether the representation is made innocently or knowingly; the fraud in the one case being constructive and in the other actual.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 17, 18; Dec. Dig. § 20.* 6 Va.-W. Va. Enc. Dig. 463; 14 Va.-W. Va. Enc. Dig. 471; 15 Va.-W. Va. Enc. Dig. 425.]

4. Fraud (§ 22*)—False Representations—Duty to Inquire.—One to whom a representation has been made is entitled to rely on it as against the maker without further inquiry.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 19-23; Dec. Dig. § 22.* 6 Va.-W. Va. Enc. Dig. 466; 14 Va.-W. Va. Enc. Dig. 471.]

5. Fraud (§ 64*)—Deceit—Reliance on Representations—Question for Jury.—In an action for fraud, whether plaintiff relied on defendant's representations, or whether he acted in whole or in part on his own knowledge, is for the jury.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 65½, 67-71; Dec. Dig. § 64.* 6 Va.-W. Va. Enc. Dig. 466; 14 Va.-W. Va. Enc. Dig. 471.]

Error to Circuit Court, Greensville County.

Action by L. G. Walker against R. W. Jordan and others. Judgment for plaintiff, and defendants bring error. Affirmed.

S. V. Southall, of Emporia, and *R. B. Davis,* of Petersburg, for plaintiffs in error.

Buford, Lewis & Peterson, of Lawrenceville, and *E. C. Palmer,* of Emporia, for defendant in error.

JACOT *v.* GROSSMANN SEED & SUPPLY CO., Inc.

June 12, 1913.

[78 S. E. 646.]

1. Appeal and Error (§ 1053*)—Harmless Error—Erroneous Admission of Evidence.—Where the court charged that a contract of sale of seed by sample contained only an implied warranty that the goods were of the quality set out in the contract and sold by sample, and that the jury must not consider any evidence of the failure of the seed to germinate, the error, if any, in permitting witnesses to testify as to represen-

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tations as to the seed, made prior to and not contained in the contract, was not prejudicial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4178-4184; Dec. Dig. § 1053;* Trial, Cent. Dig. § 977. 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

2. Sales (§ 267*)—Contracts—Warranties.—A salesman of a seller of seed exhibited to a buyer a sample package containing the words: "Standard sample * * * crimson Calm Clover seed." The buyer ordered 1910 crop Crimson Clover seed. The seller accepted the order, and forwarded an invoice reciting that the seller did not guarantee any of the seeds sold, and, if not accepted on that condition, the buyer must return them at once. The buyer accepted the goods. Held, that the only warranties made by the seller were that the seed were of the 1910 crop and of the quality of the sample.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 760, 761; Dec. Dig. § 267.* 13 Va.-W. Va. Enc. Dig. 660; 14 Va.-W. Va. Enc. Dig. 1069; 15 Va.-W. Va. Enc. Dig. 1062.]

3. Sales (§ 288*)—Implied Warranty—Acceptance of Goods—Damages for Breach of Warranty.—A buyer in a contract of sale by sample with the warranty that the goods shall correspond with the sample, who accepts the goods after opportunity for inspection, is not thereby prevented from recovering damages for breach of the warranty, though the retention and use of the goods without any complaint warrants a strong inference that they comply with the contract.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 817-823; Dec. Dig. § 288.* 13 Va.-W. Va. Enc. Dig. 661; 14 Va.-W. Va. Enc. Dig. 1069; 15 Va.-W. Va. Enc. Dig. 1062.]

4. Sales (§ 442*)—Implied Warranty—Breach of Warranty—Measure of Damages.—The measure of damages for breach of warranty of goods sold is the difference in the value of the goods at the time and place of delivery if they had conformed to the contract and the value at such time and place of the goods actually delivered, subject to a deduction for the unpaid price.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1284-1301; Dec. Dig. § 442.* 13 Va.-W. Va. Enc. Dig. 665; 14 Va.-W. Va. Enc. Dig. 1069; 15 Va.-W. Va. Enc. Dig. 1062.]

5. Sales (§ 181*)—Contract—Breach.—Evidence held to support a finding that a seller of 1910 crop of seed by sample breached his contract by failure to deliver seed of the crop of that year, and seed conforming to the sample.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 473-491; Dec. Dig. § 181.* 12 Va.-W. Va. Enc. Dig. 54.]

Error to Hustings Court of City of Petersburg.

Action by William Jacot, trading as Jacot & Mullen, against

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

the Grossman Seed & Supply Company, Incorporated. Judgment for defendant, and plaintiff brings error. Affirmed.

MARTIN *v.* HALL

Sept. 11, 1913.

[79 S. E. 320.]

1. **Evidence (§ 419*)—Parol Evidence—Deeds—Consideration.**—While the recital in a deed of the amount of consideration and its payment is prima facie evidence thereof, it may be shown by parol evidence that the actual consideration paid or promised was different from that stated, or that it has not been paid, if such evidence does not alter or contradict the legal import of the deed.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1912-1928; Dec. Dig. § 419.* 10 Va.-W. Va. Enc. Dig. 701; 14 Va.-W. Va. Enc. Dig. 804; 15 Va.-W. Va. Enc. Dig. 768.]

2. **Evidence (§ 419*)—Parol Evidence—Deeds—Consideration.**—Where a deed recited a money consideration of $600, the receipt of which was acknowledged by the grantor, it could be shown by parol evidence that while, as a matter of form, $600 passed from the grantee to the grantor, it was immediately returned, and that the real consideration was the support and maintenance of the grantor during his life; this not altering or in any way affecting the legal import of the deed.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1912-1928; Dec. Dig. § 419.* 10 Va.-W. Va. Enc. Dig. 701; 14 Va.-W. Va. Enc. Dig. 804; 15 Va.-W. Va. Enc. Dig. 768.]

3. **Deeds (§ 19*)—Failure—Consideration—Relief.**—Where the consideration for a conveyance of land was the support and maintenance of the grantor for life, and the grantee not only failed to support and maintain the grantor, but denied that she was under any legal obligation to do so, the consideration failed, and the grantor was entitled to have the conveyance rescinded by a court of equity, there being no adequate remedy at law.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 38; Dec. Dig. § 19.* 4 Va.-W. Va. Enc. Dig. 393; 15 Va.-W. Va. Enc. Dig. 265.]

Appeal from Circuit Court, Bedford County.

Suit by Matthew V. Hall against Martha Bell Martin. From a decree for plaintiff, defendant appeals. Affirmed.

S. S. Lambeth, Jr., and *Landon Lowry,* both of Bedford City, for appellant.

Sale & Withers, of Bedford City, and *S. V. Kemp,* of Lynchburg, for appellee.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.